

# CITY OF SAN CLEMENTE

## City Council Minutes

### Regular City Council Meeting – October 20, 2015

*These minutes reflect the order in which items appeared on the meeting agenda and do not necessarily reflect the order in which items were actually considered.*

A Regular Meeting of the San Clemente City Council was called to order on October 20, 2015 at 5:03 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Hamm.

**PRESENT**           BAKER, BROWN, DONCHAK, WARD, MAYOR HAMM

**ABSENT**            NONE

**STAFF PRESENT** James Makshanoff, City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

#### **CLOSED SESSION**

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR HAMM, CARRIED 5-0, to recess to Closed Session at 5:04 p.m. to discuss the following:

#### **A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8

Property: North Beach Passenger Services Building, 1900 North El Camino Real, San Clemente

Agency Negotiator: Assistant City Manager

Negotiating Party: Pete Van Nuys

Under Negotiation: Term and Rent for Possible Lease Extension

#### **B. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

Case Name: Dual Diagnosis Treatment Center, Inc., et al. v. City of San Clemente

U.S. District Court Case Number: 8:15-cv-01611

#### **C. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

Case Name: Emergency Shelter Coalition v. City of San Clemente

Case Number: OCSC 30-2014-00758880

*Closed Session items continued on following page*

**D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8  
Property: 1030 Calle Negocio, San Clemente  
Agency Negotiator: Assistant City Manager  
Negotiating Party: Family Assistance Ministries  
Under Negotiation: Term and Rent for Possible Lease Extension

**E. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)  
Case Name: Capistrano Shores, Inc. v. City of San Clemente  
Case Numbers: OC SC 30-2014-00709987-CU-EI-CXC and 30-2014-00726889-CU-WM-CJC

**F. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to Government Code Subsection 54956.9(d)(2)  
Number of potential cases: 2

**G. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)  
Case Name: Daniel Walker v. City of San Clemente  
Case Numbers: G050552 and G050987; S229788 and S229789

In attendance for the full Closed Session were all members of the City Council, City Manager Makshanoff, Assistant City Manager Sund, and City Attorney Smith. Community Development Director Gallardo-Daly was in attendance for Items B, C, D and E.

**MEETING RECONVENED**

Council reconvened at 6:21 p.m., with all members present.

**INVOCATION**

Robert Kenner, Chaplain, Camp Pendleton Marine Corps Base, gave the invocation.

**PLEDGE OF ALLEGIANCE**

Councilmember Brown led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **San Clemente High School Update**

San Clemente High School students McKenna Brownell and Daniel Klevit narrated a PowerPoint presentation entitled “San Clemente High School” concerning San Clemente High School campus activities. A hard copy of the presentation is on file with the City Clerk.

B. **Electric Vehicle-Grid Integration**

Kevin O’Beirne, San Diego Gas & Electric, narrated a PowerPoint presentation entitled “Electric Vehicle Integration, Connected to a Cleaner Future” concerning electric vehicle-grid integration. A hard copy of the presentation is on file with the City Clerk.

C. **Water Rate Structure Presentation**

Sanjay Gaur, Vice President of Raftelis, narrated a PowerPoint presentation concerning the City’s water rate structure and responded to Council inquiries. A hard copy of the presentation is on file with the City Clerk.

Brad Malamud, San Clemente, opined that the City’s water rate structure is not legal and suggested that residents should be charged flat rates for water; asserted that flat rates are more conducive to water conservation; provided Council with a document entitled “San Clemente Water Rates, Issues that RFC or City Should Address”. A hard copy of Mr. Malamud’s document is on file with the City Clerk.

Lew Avera, San Clemente, invited Council and residents to attend the Metropolitan Water District’s Forum entitled “Water Tomorrow” on Thursday, October 22, 2015; noted the forum will address the District’s Integrated Water Resources Plan.

Council requested information on water penalties and the effect of the fines on water conservation.

City Attorney Smith stated that the City’s current water rate structure satisfies legal requirements.

2. **ORAL COMMUNICATIONS (PART 1)**

**Entrepreneur Team from San Clemente High School**

Hannah Reed, Lauren Woodstra, Lance Woodstra, Nicky Chin and Mikayla Hartigan, Entrepreneur Team from San Clemente High School, conveyed that they created a product called “MOM – Memory Optimizing Manager” that is a finalist in a global technology competition; requested that the City donate \$2,500 to allow them to travel to Milan, Italy, to compete in the global technology exposition; responded to Council inquiries. A hard copy of the Entrepreneur Team’s PowerPoint entitled “MOM – Memory Optimizing Manager” is on file with the City Clerk.

Council requested the San Clemente High School Entrepreneur Team provide a written funding request to the City Manager, who will provide a donation within his authority limits.

**Orange County Mosquito and Vector Control District**

Jim Dahl, representing the Orange County Mosquito and Vector Control District, reported that the Yellow Fever Mosquito has been found in Mission Viejo; noted that Yellow Fever Mosquitoes bite during the day and carry many diseases; advised that the number of West Nile Virus cases has increased during the month of October; urged residents to contact Orange County Mosquito and Vector Control if they are bitten by a mosquito during the day or see a dead bird.

**General Plan Land Use/Open Space**

Don Kunze, San Clemente, voiced concern with the land use and open space components of the Centennial General Plan; suggested that public meetings should be conducted on the General Plan to ensure Ole Hanson’s vision is being preserved.

3. MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to waive reading in full of all Resolutions and Ordinances.

4. **CONSIDERATION OF AGENDIZING ITEMS REQUIRING IMMEDIATE ACTION**

None.

5. **CLOSED SESSION REPORT – CITY ATTORNEY**

City Attorney Smith advised that no reportable actions were taken during this evening’s Closed Session.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to approve the Consent Calendar, with the removal of Item B-1.

A. **City Council Minutes**

None.

B. **Commission/Committee Minutes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to receive and file:

- 2. Planning Commission Study Session minutes of October 7, 2015.
- 3. Zoning Administrator Regular Meeting minutes of October 7, 2015.
- 4. Coastal Advisory Committee Regular Meeting minutes of August 13, 2015.

C. **Warrant Register**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to approve:

Wire Transfers Nos. 1438  
 through 1441, paid on 10-2-15, and  
 Warrant Nos. 527894 through  
 528039, paid on 10-2-15,  
 in the amount of.....\$1,586,366.83

Warrant Nos. 528040 through  
 528194, paid on 10-9-15, in the amount  
 of.....\$1,713,469.01

TOTAL WARRANT REGISTER.....\$3,299,835.84

**Payroll Register**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to approve:

Warrant Nos. 435 through 436\*  
and Automatic Deposit Advises 27284  
through 27599 for the period 9-14-15  
through 9-27-15, paid on 10-2-15, in  
the amount of.....\$ 425,750.62

TOTAL PAYROLL REGISTER.....\$ 425,750.62

*\*Note: Warrant Nos. 430-434 were voided due to a printer malfunction.*

D. **Proposed Staffing Changes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to:

1. Adopt Resolution No.15-45 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING A REVISED SALARY SCHEDULE AND NEW CLASSIFICATIONS AND AMENDING RESOLUTION NO. 15-34 AND ANY OTHER RESOLUTIONS IN CONFLICT THEREWITH.
2. Approve supplemental appropriations of \$37,000 each to Water and Sewer Fund Account Nos. 052-461-41010 and 054-461-41010 for additional salary and benefits for the Management Analyst II position.

**ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**

B-1. **Minutes of the Regular Planning Commission Meeting of October 7, 2015**

Council called up for review CUP 15-124 (Wal-Mart Instructional Alcohol Tasting).

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to receive and file the balance of the minutes of the Regular Planning Commission Meeting of October 7, 2015.

7. **PUBLIC HEARINGS**

None.

**8. UNFINISHED BUSINESS****A. Construction and Repair of Tile Sidewalks**

Report from the Public Works Director/City Engineer concerning construction and repair of tile sidewalks.

Public Works Director/City Engineer Cameron and Deputy Public Works Director Bonigut reviewed the contents of the Administrative Report and responded to Council inquiries.

Following Council discussion, MOTION BY MAYOR HAMM, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to direct Staff to eliminate “San Clemente Red” colored dye from sidewalks in commercial areas unless appealed by the property owner to the Public Works Director, in which case the Director will have the discretion to allow the use of San Clemente Red dye in the sidewalk.

City Manager Makshanoff, together with City Attorney Smith, explained that three Councilmembers own property within 500 feet of sidewalks affected by the policy issue relating to the construction and repair of tile sidewalks. In order to provide a quorum to act upon the policy issue, the Rule of Necessity was implemented, whereby the conflicted Councilmembers drew cards with the understanding that the Councilmember who drew the highest card would be re-qualified to consider the issue relating to the sidewalk policy. By virtue of drawing lower cards, Councilmember Brown and Mayor Hamm were deemed ineligible to participate in the policy discussion.

Council determined to consider the contract for the FY 2015 Sidewalk Repair Program as the first matter of business. Councilmember Brown recused himself from deliberations on the subject contract because he owns property within 500’ of a sidewalk proposed for repair; left the Chambers at 8:08 p.m.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, to:

1. Approve the plans and specifications for the FY 2015 Sidewalk Repair Program, Project No. 19317.
2. Approve, and authorize the Mayor to execute, Contract C15-62 by and between the City of San Clemente and Unique Performance Construction, Inc., providing for the FY 2015 Sidewalk Repair Program, Project No. 19317, in the amount of \$67,340, with the modification that any sidewalks in a commercial district that were proposed to be San Clemente Red be changed out with standard gray concrete.

Following discussion, Council determined that it may be appropriate to consider the policy issue prior to voting on the motion on the FY 2015 Sidewalk Repair Program contract.

Councilmember Brown returned to the dais at 8:25 p.m. to enable him to vote on the motion to determine whether the policy issue should be considered prior to voting on the FY 2015 Sidewalk Repair Program Contract.

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER WARD, CARRIED 3-2 (COUNCILMEMBER DONCHAK AND MAYOR HAMM VOTING NOE), to discuss the policy issue before voting on the contract for the sidewalk repair program.

Councilmember Brown and Mayor Hamm left the Chambers at 8:27 p.m. because they own property within 500' of sidewalks affected by the policy decision and they were not re-qualified to participate as a result of the Rule of Necessity drawing that was conducted earlier in the meeting.

The meeting continued with Councilmembers Donchak, Ward and Mayor Pro Tem Baker present.

Larry Culbertson, San Clemente Historical Society, urged Council to not change the current sidewalk policy; spoke on the importance of the City's 6-1/2 miles of historic sidewalks to the community; opined that removing the sidewalks from the historic structures list would necessitate an evaluation by an historic consultant, a CEQA study, and possibly an Environmental Impact Report.

Warren Vidrine, San Clemente, spoke in support of retaining the City's current sidewalk policy; suggested that the public should be engaged prior to considering a change to the historic sidewalk policy; urged that the contract with Unique Performance be approved.

During the ensuing discussion, Council discussed the following: 1) Cost/benefit of historic tile sidewalks versus gray concrete sidewalks; 2) Whether opportunities exist to improve the current sidewalk policy; 3) Whether more-competitive tile vendors are available; 4) Possibility of conducting a workshop, or otherwise maximizing public participation, with regard to the sidewalk issue; 5) Whether or not Resolution No. 07-72, that was adopted eight years ago and that established the City's designated historic structures list, should be reevaluated at this point in time; 6) Whether or not the Code should be modified to allow historic sidewalks to be replaced with gray concrete; and 7) Whether or not the City's current 50/50 cost-share practice for both tile and gray concrete sidewalks should be retained or modified.



Following deliberations, Council directed that the Planning Commission review the City's policy with regard to construction and repair of tile sidewalks, with the understanding that public noticing will be undertaken to help ensure widespread community notification.

Mayor Hamm returned to the dais at 9:30 p.m.

SUBSTITUTE MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 3-1-1 (MAYOR PRO TEM BAKER VOTING NOE AND COUNCILMEMBER BROWN ABSTAINING), to:

1. Approve the plans and specifications for the FY 2015 Sidewalk Repair Program, Project No. 19317.
2. Approve, and authorize the Mayor to execute, Contract C15-62 by and between the City of San Clemente and Unique Performance Construction, Inc., providing for the FY 2015 Sidewalk Repair Program, Project No. 19317, in the amount of \$67,340, with the exception that gray concrete be utilized in place of San Clemente Red in the repairs in commercial areas unless appealed by the property owner to the Public Works Director. The Public Works Director has the discretion to allow the use of San Clemente Red.

Councilmember Brown returned to the dais at 9:33 p.m.

9. **NEW BUSINESS**

A. **Contract Award – Ambulance Services**

Report by the Assistant City Manager concerning a contract award for ambulance services for a one-year pilot program.

Assistant City Manager Sund reviewed the contents of the Administrative Report and responded to Council inquiries.

Jim Dahl, San Clemente, reviewed the City's Ambulance Subscription Program; questioned whether the private ambulance will be stationed at Fire Station 50 and constantly available in the City; asserted that most ambulance companies do inter-facility transports in addition to 911 transports and noted the importance of the private ambulance remaining in the City so that it is available to residents if needed.

Council requested an update on Ambulance Services as part of the Long Term Financial Plan process in 2016.

John Abel, Orange County Fire Authority (OCFA) Division Chief, noted that OCFA is capturing all data relating to response times and will provide a report to Council.

MOTION BY MAYOR HAMM, SECOND BY MAYOR PRO TEM BAKER, CARRIED 5-0, to:

1. Approve, and authorize the City Manager to execute, Contract C15-71 by and between the City of San Clemente and Care Ambulance Services, providing for full-time ambulance services for a one-year period from November 1, 2015 through October 31, 2016, with two three-month extension options, for an annual amount of \$469,800.
2. Approve a supplemental budget appropriation in FY 2016 of \$238,500 to the Ambulance Program line item in the Fire Services Division budget, Account 001-226-43612-000-00000.
3. Approve additional estimated revenue of \$100,000 for FY 2016 for Ambulance Service Charges to Account 001-000-34221.

**B. Sustainable Transportation Planning Grant Program Applications – I-5 Interchanges Study and MO2 Class I Bicycle/Pedestrian Path**

Report from the Public Works Director/City Engineer concerning sustainable transportation planning grant applications for the I-5 Interchanges Study and evaluation of an MO2 Class I Bicycle/Pedestrian Path.

Public Works Director/City Engineer Cameron and Deputy Public Works Director Bonigut reviewed the contents of the Administrative Report and responded to Council inquiries.

Brenda Miller, San Clemente, urged Council to support the proposed grants; narrated a PowerPoint presentation entitled “Segunda Deshecha Channel Class 1 Car-Free 3-Mile Ped/Bike Path Feasibility Grant”. A hard copy of the presentation is on file with the City Clerk.

Ellie Hammargren, San Clemente, urged Council to support the sustainability grants; noted that bicycle corridors would allow for students to safely ride their bikes to school.

Pete Van Nuys, San Clemente, spoke in support of the M02 Class I Bicycle Pedestrian Path; noted that the full 3-mile path is necessary to make it a useful resource for bicyclists and pedestrians.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 4-1 (MAYOR PRO TEM BAKER VOTING NOE), to approve, and authorize the City Manager to execute and submit, a Sustainable Transportation Planning Grant Program funding application for the I-5 Interchanges Study.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 3-2 (COUNCILMEMBER BROWN AND MAYOR PRO TEM BAKER VOTING NOE), to approve, and authorize the City Manager to execute and submit, a Sustainable Transportation Planning Grant Program funding application for the evaluation of an M02 Class I Bicycle/Pedestrian Path, with an added segment from Camino Vera Cruz to the east side of La Pata.

10. **ORAL COMMUNICATIONS (PART 2)**

**Renovations Requiring Sidewalk Construction**

Taylor Helm, San Clemente, requested that the City's policy of requiring a property owner to install a sidewalk (when a sidewalk does not already exist) when the property is renovated at a valuation of \$50,000+ be agendized for a future meeting; opined that the subject requirement serves as a disincentive for property upgrades.

Council directed that the sidewalk installation issue be agendized for a future meeting and that Staff address the history of the subject requirement in its Administrative Report.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Councilmembers**

**San Clemente Surf Classic**

Mayor Pro Tem Baker reported on his attendance at the San Clemente Surf Classic and displayed photographs of the event. Copies of the photographs are on file with the City Clerk.

**Red Ribbon Week**

Councilmember Brown invited residents to attend the Red Ribbon Day Parade on Monday, October 26, 2015.

**S.O.N.G.S. Community Engagement Panel**

Councilmember Brown reported that the next Community Engagement Panel meeting is scheduled for November 5, 2015 at 6:00 p.m. in Oceanside.

**San Clemente High School Homecoming**

Councilmember Brown reported that San Clemente High School's Homecoming Parade and game will take place on Friday, October 23, 2015.

**San Clemente Readiness Festival**

Councilmember Brown reported on his attendance at the San Clemente Readiness Festival.

**Park Semper Fi 10-Year Anniversary Celebration**

Mayor Hamm reported on his attendance at the Park Semper Fi anniversary event.

**San Clemente Oktoberfest**

Mayor Hamm reported on his attendance at the San Clemente Oktoberfest at the San Clemente Elks Lodge.

12. **RESOLUTIONS/ORDINANCES**A. **Ordinance No. 1607 (Second Reading) – Massage Parlors (Amendment to Title 5 of the Municipal Code)**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM BAKER, CARRIED 5-0, to adopt Ordinance No. 1607 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING TITLE 5 OF THE SAN CLEMENTE MUNICIPAL CODE, FOR THE PURPOSE OF PROVIDING LOCAL REGULATORY AUTHORITY OVER MASSAGE USES CONSISTENT WITH STATE LAW.

B. **Ordinance No. 1608 (Second Reading) – Massage Parlors (Amendment to Title 17 of the Municipal Code)**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM BAKER, CARRIED 5-0, to adopt Ordinance No. 1608 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, FOR THE PURPOSE OF PROVIDING LOCAL REGULATORY AUTHORITY OVER MASSAGE USES CONSISTENT WITH STATE LAW.

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to adjourn at 10:36 p.m. The next Regular City Council meeting will be held on November 3, 2015 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be considered at 5:00 p.m. The Regular Business Meeting will commence at 6:00 p.m.



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MAYOR of the City of  
San Clemente, California



CITY CLERK of the City of  
San Clemente, California